

MEETING DATE: December 21, 2005 DIVISION: Public Works

BULK ITEM: Yes x No          DEPARTMENT: Facilities Maintenance

STAFF CONTACT PERSON: John King

**ITEM BACKGROUND:** Nextel has requested approximately 96 square feet of space next to the County Courthouse for the installation of a generator and supporting equipment to support their communications tower and equipment located 500 Whitehead St., Key West. Nextel is responsible for all costs associated with renovations of the additional area and will pay the County an additional \$6,000 per year for the added space.

**CONTRACT/AGREEMENT CHANGES:** Add approximately 96 square feet of space, increase annual license fee from \$20,000 to \$26,000.

DISPOSITION: \_\_\_\_\_ AGENDA ITEM #:

# MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

## CONTRACT SUMMARY

Contract with: Nextel South Corp.

Contract # \_\_\_\_\_

Effective Date: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Contract Purpose/Description: Amendment to license agreement to add approx. 96 sq. ft. of space at 500 Whitehead Street, Key West, to install a generator and support equipment to support communications tower and equipment.

Contract Manager: Beth Leto  
(Name)

4560  
(Ext.)

Public Works - #1  
(Department/Stop #)

for BOCC meeting on December 21, 2005

Agenda Deadline: December 6, 2005

## CONTRACT COSTS REVENUE

Total Dollar Value of Contract: \$6,000

Current Year Portion: \_\_\_\_\_

Budgeted? Yes ☒ No ☐

Account Codes: \_\_\_\_\_

Grant: \$ \_\_\_\_\_

County Match: \$ \_\_\_\_\_

## ADDITIONAL COSTS

Estimated Ongoing Costs: \$ 0 /yr. For: \_\_\_\_\_  
(Not included in dollar value above) (e.g., maintenance, utilities, janitorial, salaries, etc.)

## CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>11/17/05</u>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<u>[Signature]</u>	<u>11/17/05</u>
Risk Management	<u>11-22-05</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>M. Slawick</u>	<u>11-22-05</u>
O.M.B./Purchasing	<u>11-23-05</u>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<u>[Signature]</u>	<u>11/23/05</u>
County Attorney	_____	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Nat Cassel</u>	<u>11-4-05</u>

Comments: \_\_\_\_\_

Market: South Florida  
Area: Florida  
Nextel Site: FL1869-A Downtown Key West

**FIRST AMENDMENT  
TO LICENSE AGREEMENT**

This First Amendment to License Agreement ("Amendment") is made as of this \_\_\_\_\_ day of \_\_\_\_\_ 2005, by and between Monroe County, Florida, a political subdivision of the State of Florida, with offices located at 1100 Simonton Street, Key West, Florida 33040 (hereinafter referred to as "County") and Nextel South Corp., a Georgia corporation with offices located at 851 Trafalgar Court, Suite 300E, Maitland, Florida 32751 (hereinafter referred to as "Licensee")

**WITNESSETH:**

WHEREAS, County and Licensee entered into a certain License Agreement dated December 9, 1998, (hereinafter referred to as the "Agreement"), for premises consisting of approximately one hundred (100) square feet located on top of the County Courthouse at 500 Whitehead Street, Key West, Florida (the "Building"), space on the tower, and all access and utility easements, if any (hereinafter collectively referred to as the "Premises"); and

WHEREAS, County and Licensee agree that the Agreement provides that Licensee shall have the right to operate communications services at the Premises; and

WHEREAS, the parties now desire to modify and amend the Agreement in order to increase the square footage of the Premises, adjust the annual license fee, and update Licensee's notice addresses.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Agreement is amended to reflect the addition of interior space in the outbuilding next to the County Courthouse of approximately 96 square feet for the installation of a generator and supporting equipment. The parties also agree that the costs for any renovations to the County buildings required to accommodate the installation of Licensee's generator shall be borne by Licensee.

2. Paragraph 2 of the Agreement is amended to reflect an increase of Six Thousand and 00/100 Dollars (\$6,000.00) to the annual license fee currently in effect as of the start of construction of the modifications under this Amendment.

3. Paragraph 22 of the Agreement is amended to update Licensee's notice addresses as follows:

Nextel South Corp.  
851 Trafalgar Court, Suite 300E  
Maitland, Florida 32751  
ATTN: Property Manager

with a copy to:  
Sprint  
2001 Edmund Halley Drive  
Reston, Virginia 20191-3436  
ATTN: Regional Legal Services, Contracts Manager

4. Paragraph 28 of the Agreement is amended to reflect the addition of the following provision:

If the County should renovate the building that contains the Licensee's generator and supporting equipment at a future date, and in addition, the County decides to upgrade the County's main generator to a size that will accommodate both the County and Licensee's current needs, future needs, and be commercially viable, the parties agree to negotiate in good faith with regard to the size and type of generator, the location for installation of the proposed generator, the costs and expenses associated with such installation, and the maintenance associated with such an upgrade.

5. Exhibit A of the Agreement is amended to include the attached Supplement to Exhibit A. Any and all references to Exhibit A shall hereinafter include Supplement to Exhibit A.

6. Effective as of the date of this Amendment, Licensee has the right to do all work necessary to prepare, maintain and alter the Premises in accordance with this Amendment and as may be necessary for Licensee's business operations at the Premises. All alterations, changes and equipment modifications made pursuant to this Amendment shall be made in compliance with the terms, covenants and conditions of the Agreement, as hereby amended, and shall remain Licensee's personal property and are not fixtures. County and Licensee further affirm that title to the Licensee's Facilities (including any modifications made in accordance with this Amendment) shall be held by Licensee.

7. Miscellaneous.

(a) All capitalized terms used herein, unless otherwise defined herein, shall be defined in conformity with the terms and conditions of the Agreement.

(b) In case of any inconsistencies between the terms and conditions contained in the Agreement and the terms and conditions contained herein, the terms and conditions herein shall control. Except as set forth herein, all provisions of the Agreement remain unchanged and in full force and effect.

(c) Licensee shall have the right to record an amended Memorandum of Agreement in the official Records of the County where the Property is located. County agrees to execute an amended Memorandum of Agreement for recording upon request by Licensee.

(d) This Amendment may be executed in multiple counterparts, each copy of which shall be deemed an original document.

Market: South Florida

Area: Florida

Nextel Site: FL1869-A Downtown Key West

IN WITNESS WHEREOF, the parties have executed this instrument as a sealed instrument as of the day and year first written above.

**COUNTY:**

Monroe County, Florida  
a political subdivision of the State of Florida

**LICENSEE:**

Nextel South Corp., a Georgia corporation

By: \_\_\_\_\_

Name: The Honorable

Title: Mayor, Monroe County, Florida

Date: \_\_\_\_\_

Witnesses for \_\_\_\_\_:

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: Greg Crosby

Title: Director, Site Development

Date: 10/26/05

Witnesses for Greg Crosby:

Print Name: Monique Jones

Print Name: Rich Hatfield

MONROE COUNTY ATTORNEY

APPROVED AS TO FORM:

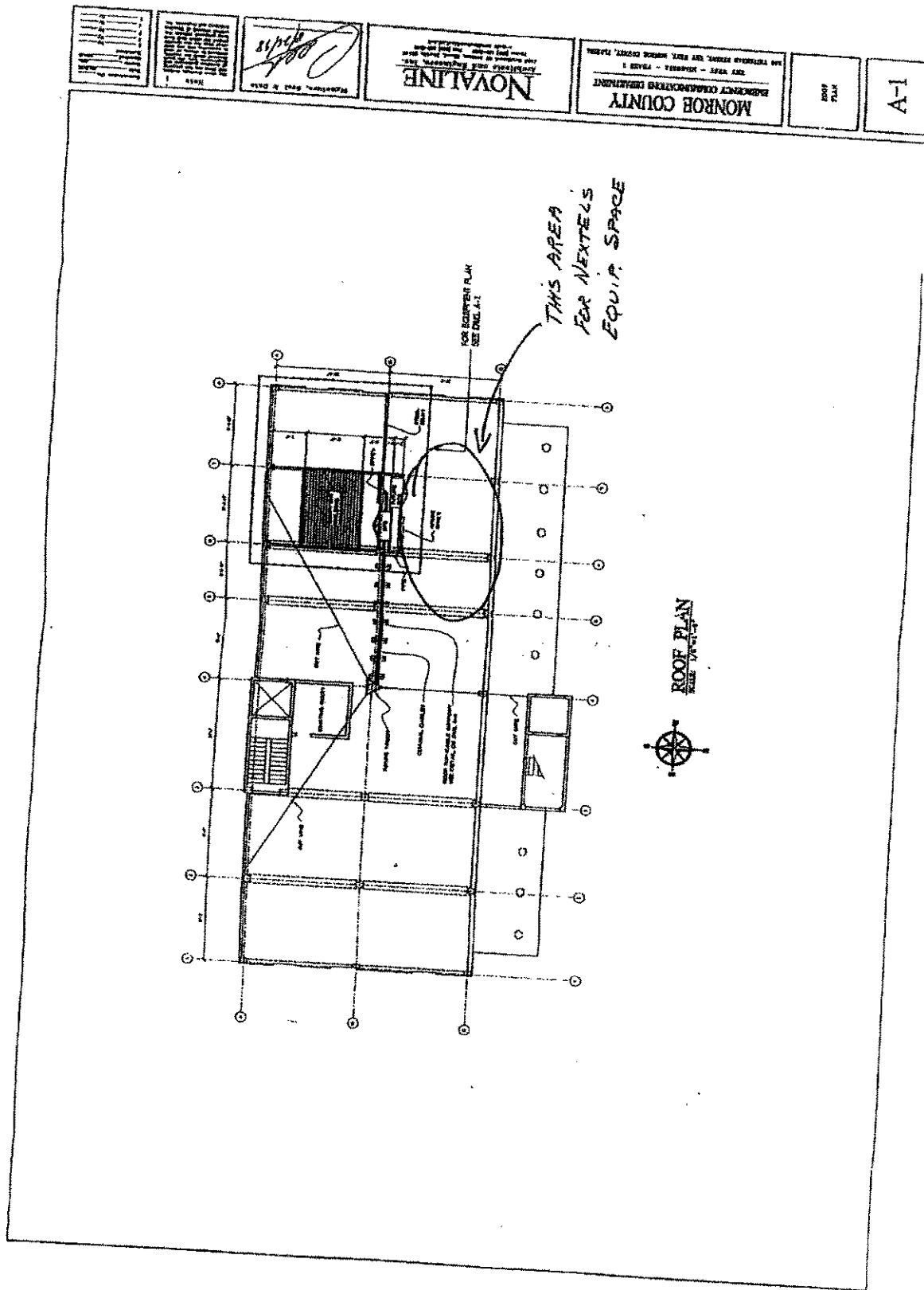
Natileene W. Cassel  
NATILEENE W. CASSEL

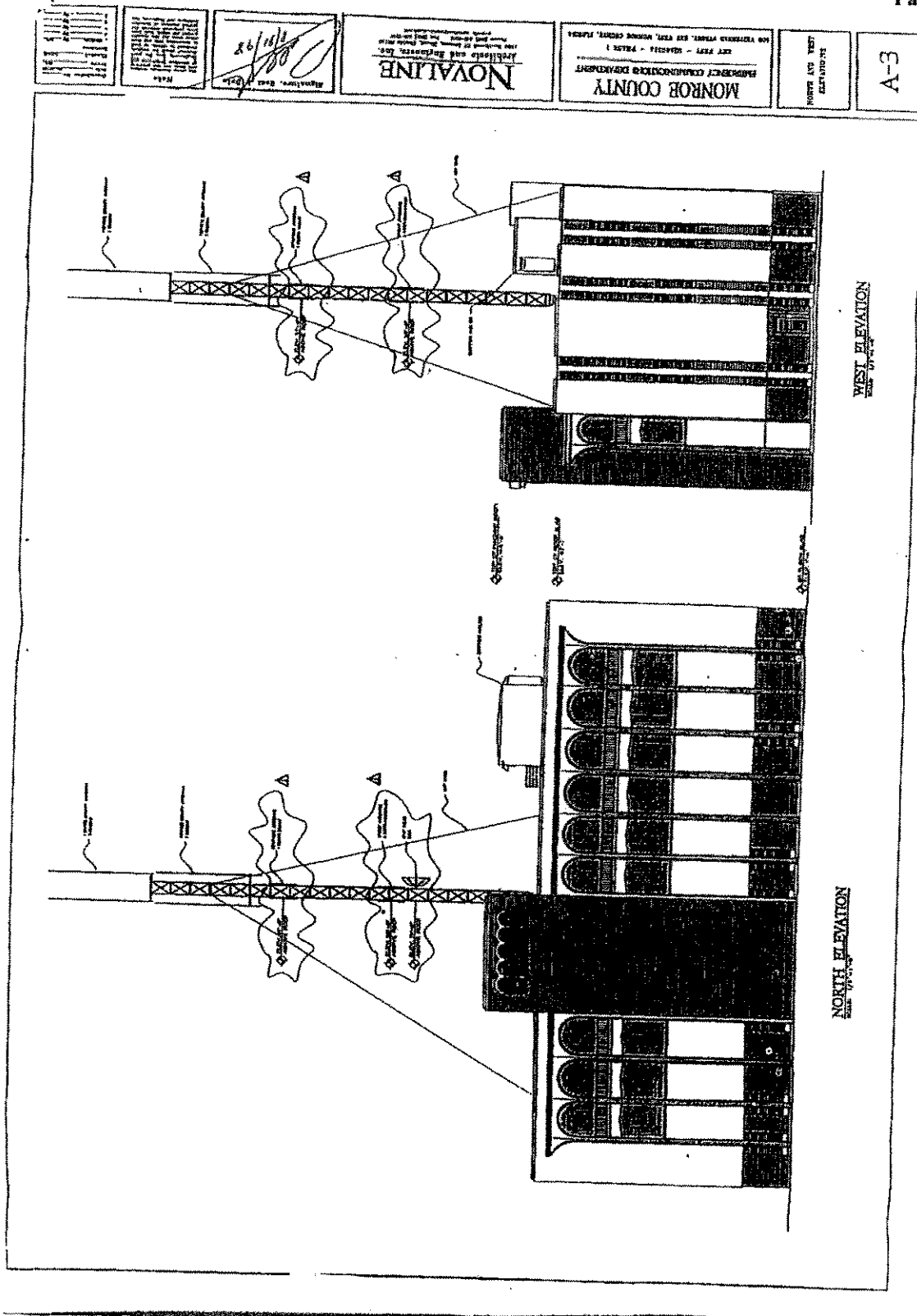
ASSISTANT COUNTY ATTORNEY

Date: 11/14/05


Market: South Florida  
Site No: FL1869A  
Site Name: Downtown Key West

**EXHIBIT A**  
**THE PREMISES**



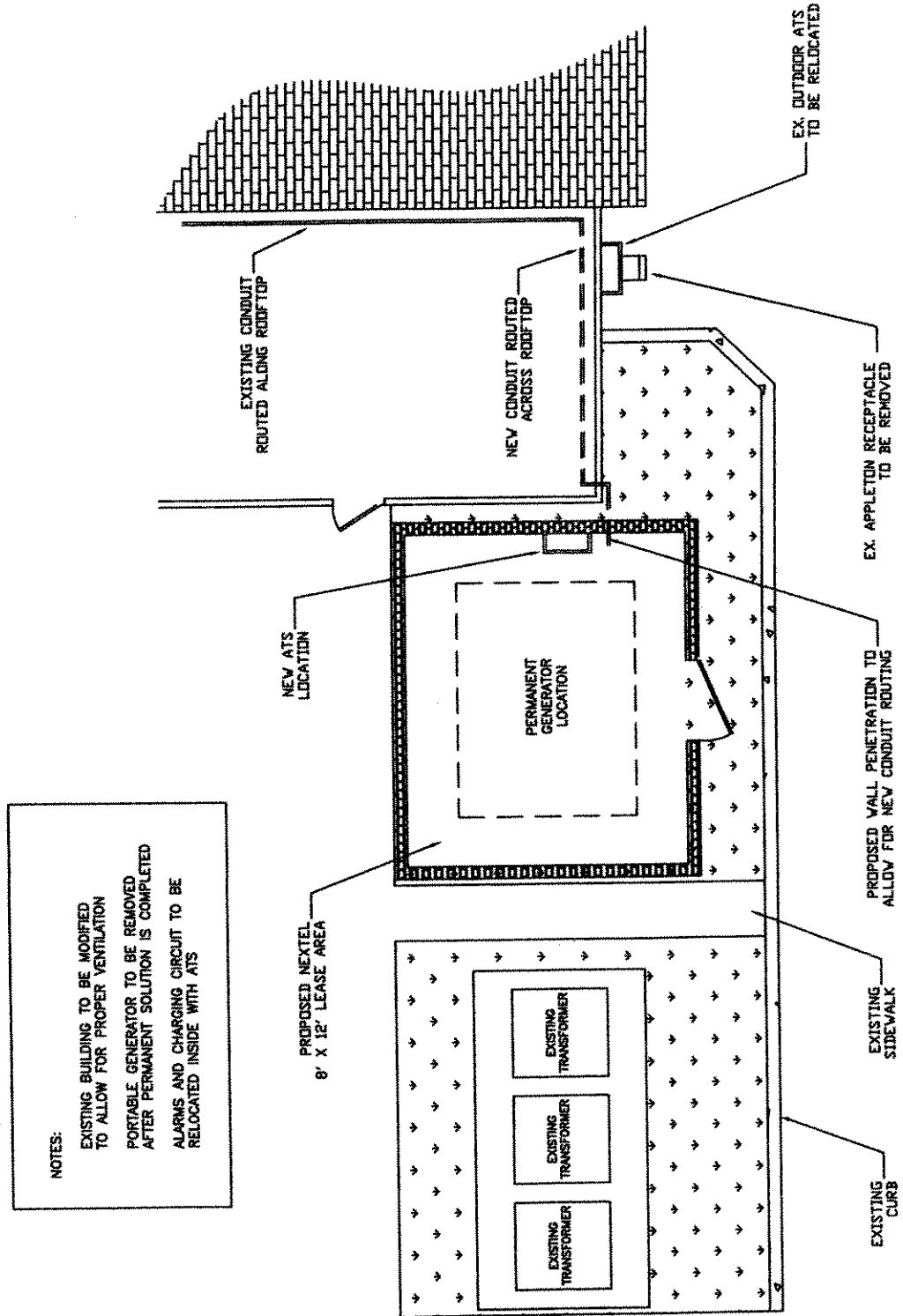




		<b>FL1869</b>	
BARAN TELECOM 405 COURTLAND AVENUE SUITE 2405 ALTAMONTE SPRINGS, FL 32714		DOWNTOWN KEY WEST 500 WHITEHEAD STREET KEY WEST, FL 33540 MONROE COUNTY	
NOT TO SCALE		NOT TO SCALE	

Supplement to Exhibit A

Page 3 of 3



NOTES:  
 EXISTING BUILDING TO BE MODIFIED  
 TO ALLOW FOR PROPER VENTILATION  
 PORTABLE GENERATOR TO BE REMOVED  
 AFTER PERMANENT SOLUTION IS COMPLETED  
 ALARMS AND CHARGING CIRCUIT TO BE  
 RELOCATED INSIDE WITH ATS

Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

FILED FOR RECORD  
99 MAR -4 AM 9:27  
DANNY L. KOLHAGE  
CLK. CIR. CT.  
MONROE COUNTY, FLA.

## LICENSE AGREEMENT

This License Agreement (the "Agreement") is made and entered into this 9<sup>th</sup> day of December, 1998, by and between MONROE COUNTY, FLORIDA, whose address is 500 Whitehead Street, Key West, Florida 33040 (hereinafter referred to as "COUNTY") and Nextel South Corp, a Georgia Corporation d/b/a Nextel Communications with an address of 851 Trafalgar Court, Suite 300E, Maitland, FL 32751 (hereinafter referred to as "LICENSEE").

COUNTY is the owner of certain real property (the "Real Property"), a guyed communications tower and communications equipment facility located on top of the County Courthouse at 500 Whitehead St, Key West Florida and COUNTY is willing to lease to LICENSEE, approximately 100 square feet of the designated portion of the rooftop and space on the new Tower as proposed to the COUNTY in the Sprint Spectrum Agreement. (The Building Space and the Tower Space are collectively referred to as the ("Premises")), subject to the terms and conditions set forth below. In consideration of the foregoing premises and the license fees and mutual covenants contained herein, the parties agree as follows:

1. COUNTY hereby grants a license to LICENSEE, and LICENSEE accepts the right to use such a license from COUNTY, the Premises, subject to the terms and conditions of this License Agreement. The parties shall mutually agree as to where LICENSEE will locate its equipment in the Building Space, and such shall be reflected in Exhibit "A" which shall serve as conclusive evidence as to the parties' agreement to this matter. The parties agree that this License Agreement and LICENSEE'S obligations hereunder are contingent upon the Sprint Spectrum completing construction of the Tower and Building as proposed by Sprint Spectrum in the attached proposal and plans, and receiving all permits, approvals and certificates necessary for the use and occupancy thereof. LICENSEE shall use the Premises for the purpose of constructing, maintaining and operating a communications facility and uses incidental thereto the communication facility, consisting of the placement of communicating services equipment, mounting of antennas, and installation of coaxial cables (between the communicating services equipment and the antennas), electrical utility service and fiber optic or telephone cables. The antennas and associated equipment to be mounted on the Tower as mutually agreed to by COUNTY Communications. COUNTY also grants to LICENSEE, the non-exclusive right for ingress and egress, on foot or motor vehicle, including trucks, to the Premises and adjacent parking areas, and associated common areas seven (7) days a week, twenty-four (24) hours a day, including normal business hours, for installation, maintenance and operation, all at LICENSEE'S sole expense, of the Communications Facility, including the installation and maintenance of utility wires, cables, conduits and pipes over, under or

Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

along said right of way. LICENSEE acknowledges that this is a secured facility and may require County escort to various areas within the facility. COUNTY shall cooperate with LICENSEE in its effort to obtain utility service along said right of way by signing such documents or easements as may be required by utility companies. In the event any utility company is unable to use the right of way, the COUNTY agrees to grant additional right of way or easement as necessary. COUNTY shall share any existing parking areas for use by LICENSEE adequate to meet the needs of LICENSEE. COUNTY grants LICENSEE the right to use adjoining and adjacent land as is reasonably required during the installation of the Communications Facility.

2. LICENSEE must commence installation of its communications equipment on the Premises within 60 days of receipt of final building permits to construct the same or One Hundred Eighty (180) days from final execution of this Agreement, whichever ever first occurs ("Commencement Date"). LICENSEE shall complete said installation within 90 days of commencement of construction. LICENSEE shall provide COUNTY with written notice of the Commencement Date within ten (10) days preceding the commencement by LICENSEE and which written notice shall become a part of this LICENSE AGREEMENT. From and after the Commencement Date, LICENSEE shall pay to COUNTY an annual license fee of Twenty Thousand No/100 Dollars (\$20,000.00), to be paid annually in advance plus applicable sales tax, on the commencement date, should the Commencement Date not be on the first day of the month, the first month may be prorated. License fee shall be paid to the COUNTY at the address set forth above or such other person, firm or place as the COUNTY may designate in writing at least thirty (30) days in advance of any license fee payment date. License fee shall be adjusted annually by a four (4%) per cent increase.

3. This LICENSE AGREEMENT shall be for an initial term of five (5) years, subject to the terms and conditions set forth in this LICENSE AGREEMENT. LICENSEE shall have the option to extend this LICENSE AGREEMENT for two (2) additional five (5) year terms, and such extensions shall automatically occur unless LICENSEE provides COUNTY written notice of its intention not to extend this LICENSE AGREEMENT at least six (6) months prior to the end of the then current license fee term. If at the end of the second (2nd) five (5) year extension term this LICENSE AGREEMENT has not been terminated by either party by giving to the other written notice of an intention to terminate it at least six (6) months prior to the end of such term, this LICENSE AGREEMENT shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of such term.

4. LICENSEE shall use and occupy only that portion of the equipment shelter space, Tower and antenna locations as originally proposed in the attached proposal and plans. LICENSEE shall bear all costs of permitting and construction costs. LICENSEE agrees to pay Sprint Spectrum a one-time modification fee of Twenty Thousand (\$20,000.00) Dollars due on the commencement date of this Agreement.

Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

5. LICENSEE shall prepare, at its expense, all necessary drawings and specifications for the installation of LICENSEE'S telecommunications equipment, which COUNTY shall have the right to approve, such approval not to be unreasonably withheld or delayed. COUNTY shall have been deemed to have approved the drawings and specifications if COUNTY has not given written notice of its approval disapproval of if COUNTY has not delivered written objections to LICENSEE within ten (10) business days of COUNTY's receipt of such drawings and specifications. In addition, LICENSEE shall have the right to file any applications for certificates, permits and other approvals that may be required by any federal, state or local authorities.

6. LICENSEE shall be responsible for all costs and expenses relating to the provision of electrical service to its communications equipment. LICENSEE'S electrical service shall be separately metered and LICENSEE shall be responsible for the cost of installation of such meter.

7. LICENSEE agrees to install radio equipment of a type and frequency, which will not cause interference with existing antennas, or equipment on the Tower at the time of such installation. All disputes regarding interference whether caused by the COUNTY, LICENSEE or other tenant(s) and/or user(s) of the Tower and Building shall be resolved pursuant to the terms and provisions of that certain interference agreement attached hereto as Exhibit "I" (the "Interference Agreement"). COUNTY agrees that prior to allowing any additional tenant(s) or user(s) to collocate on the Tower and in the building, such tenant or user must join in and agree to be bound by the Interference Agreement.

LICENSEE shall operate the LICENSEE Facilities in a manner that will not cause interference to COUNTY and other LICENSEES or licensees of the Property, provided that their installations predate that of the Licensee Facilities. All operations by LICENSEE shall be in compliance with all Federal Communications Commission ("FCC") requirements.

Subsequent to the installation of the LICENSEE Facilities, COUNTY shall not permit itself, its Lessees or licensees to install new equipment on the Property or property contiguous thereto owned or controlled by COUNTY, if such equipment is likely to cause interference with LICENSEE's operations. Such interference shall be deemed a material breach by COUNTY. In the event interference occurs, COUNTY agrees to take all action necessary to eliminate such interference, in a reasonable time period. In the event COUNTY fails to comply with this paragraph, LICENSEE may terminate this Agreement, and/or pursue any other remedies available under this Agreement, at law, and/or at equity.

8. LICENSEE does hereby agree that the COUNTY may license future additional communicating service antennas or equipment for the purpose of wireless communications on the tower and the ability to modify or relocate its above described antennas on the tower, at the Premises provided that the new licensees antennas do not conflict with COUNTY's or other tower user's antennas and equipment identified in the attached Exhibit "I" the structural capacity of the Tower, whether existing or modified by LICENSEE, is sufficient based on standard and accepted engineering practices.

Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

9. COUNTY acknowledges that it is aware of its obligations under Section 303 of the Communications Act of 1934 (47 U.S.C. 303) to maintain the painting and illumination of the tower as prescribed by the Federal Communications Commission ("FCC"). COUNTY further acknowledges that it is aware that it is subject to forfeitures assessed by the FCC for violations of such rules and requirements. COUNTY further acknowledges that it, and not the LICENSEE, shall be responsible for compliance with all tower and building markings and lighting requirements which may be required by the Federal Aviation Administration ("FAA") or the FCC, but allows LICENSEE the right to monitor the tower lighting systems on the premises. To the extent permitted by Law COUNTY shall indemnify and hold harmless LICENSEE from any fines or other liabilities caused by the COUNTY's failure to comply with the requirements of the FAA or FCC.

COUNTY acknowledges that it, and not LICENSEE, shall be responsible for compliance with all tower marking and lighting requirements of the Federal Aviation Administration ("FAA") and the FCC. COUNTY shall indemnify and hold LICENSEE harmless from any fines or other liabilities caused by COUNTY's failure to comply with such requirements. Should LICENSEE be cited by either the FCC or FAA because the Tower is not in compliance and, should COUNTY fail to cure the conditions of noncompliance within the time frame allowed by the citing agency, LICENSEE may either terminate this Agreement immediately on notice to COUNTY or proceed to cure the conditions of noncompliance at COUNTY's expense, which amounts may be deducted from the Rent.

10. Throughout the term of this LICENSE AGREEMENT and extensions thereof, COUNTY shall keep and maintain in good order, condition and repair the Real Property, Building and Tower. LICENSEE shall provide its reasonable cooperation to COUNTY in connection with COUNTY's maintenance and repair of the same; provided, however, LICENSEE shall not be required to remove its wireless telephone equipment, antennas and/or coaxial transmission lines or related equipment from the Premises in connection therewith, unless required by law.

11. LICENSEE shall indemnify and hold COUNTY harmless against any claims of liability or loss from personal injury or property damage resulting from or arising out of the use and occupancy of the Premises by the LICENSEE, its servants or agents, excepting, however, such claims or damages as may be due to or caused by the acts of the COUNTY, its servants or agents.

12. LICENSEE shall procure and maintain insurance as contained in Exhibit "B".

LICENSEE, at LICENSEE's sole cost and expense, shall procure and maintain on the Premises and on the LICENSEE Facilities, bodily injury and property damage insurance with a combined single limit of at least One Million and 00/100 Dollars (\$1,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against liability of LICENSEE, its employees and agents arising out of or in connection with LICENSEE's use of the Premises, all as provided for herein. LICENSEE

Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

acknowledges that the COUNTY is self insured for liability purposes up to the waiver of sovereign immunity caps as specified in Section 768.28, F.S., and that no other liability coverage is required of the COUNTY. COUNTY shall be named as an additional insured on the LICENSEE's policy. LICENSEE shall provide to the COUNTY a certificate of insurance evidencing the coverage required by this paragraph within thirty (30) days of the Commencement Date.

COUNTY and LICENSEE release each other and their respective principals, employees, representatives and agents, from any claims for damage to any person or to the Premises or to the LICENSEE Facilities thereon caused by, or that result from, risks insured against under any insurance policies carried by the parties and in force at the time of any such damage. COUNTY and LICENSEE shall cause each insurance policy obtained by them to provide that the insurance company waives all right of recovery by way of subrogation against the other in connection with any damage covered by any policy. Neither COUNTY nor LICENSEE shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy required by above paragraph.

13. To the extent permitted by law, COUNTY shall be responsible for the clean up of any on-site hazardous waste and for any damages, fines or penalties incurred because of the hazardous waste. COUNTY hereby indemnifies and holds LICENSEE harmless from any and all costs, expenses, actions, claims and damages to LICENSEE as a result of any contamination on the Real Property existing prior to the LICENSE AGREEMENT or hereafter caused by the COUNTY. LICENSEE will be responsible for any and all damages, losses, and expenses and will indemnify COUNTY against and from any discovery by any person of such hazardous waste generated, stored, or disposed of solely as a result of LICENSEE's equipment and uses of the premises.

14. If the Tower should be totally or substantially destroyed or damaged (so that LICENSEE may not operate it's facility as contemplated under this LICENSE AGREEMENT) so that rebuilding the Tower "as is" would not be economically feasible, as may be reasonably determined by COUNTY, LICENSEE may at it's sole discretion terminate this LICENSE AGREEMENT or rebuild the Tower at its expense. If LICENSEE should elect to rebuild the Tower as provided for in this paragraph, then in that case this Agreement shall recommence at that point in time as if this Agreement had just been approved by the parties hereto. In any event, due to such damage or destruction LICENSEE's use of the premises is disrupted, license fee due hereunder shall abate in full pending restoration or repair of the premises or termination of this LICENSE AGREEMENT if permitted hereunder. If this Agreement should terminate pursuant to this paragraph County agrees to return to LICENSEE a pro rata portion of any prepaid rent.

15. If the whole of the Real Property, Building and/or Tower or such portion thereof as will make the Premises unusable for the purposes herein, are condemned by any legally constituted authority for any public use or purpose, then in either of said events the term hereby granted shall cease from the time when possession thereof is taken by public authorities, and license fee shall be accounted for as between COUNTY and

Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

LICENSEE, as of that date and County agrees to return to LICENSEE a pro rata portion of any prepaid rent. Any lesser condemnation shall in no way affect the respective rights and obligations of COUNTY and LICENSEE hereunder. Nothing in this provision shall be construed to limit or affect LICENSEE's right to an award of compensation of any eminent domain proceeding for the taking of LICENSEE's leasehold interest hereunder.

16. If LICENSEE defaults in fulfilling any of the covenants of this License Agreement and such default shall continue for sixty (60) days after service by COUNTY of written notice upon LICENSEE specifying the nature of said default, or, if the said default so specified shall be of such a nature that the same cannot be reasonably cured or remedied within such sixty (60) day period, if LICENSEE shall not in good faith commence the curing or remedying of such default within such sixty (60) day period and shall not thereafter diligently proceed therewith to completion, then in any one or more of such events this License Agreement will terminate and come to an end as fully and completely as if such date were the day herein definitely fixed for the end and expiration of this License Agreement and LICENSEE shall then quit and surrender the Property to COUNTY as provided herein.

17. LICENSEE, upon termination of this Agreement, shall, within ninety (90) day period, remove its personal property and fixtures and restore the Premises to its original condition, reasonable wear and tear excepted. If such time for removal causes LICENSEE to remain on the LICENSE AGREEMENT Premises after the termination of this Agreement, LICENSEE shall pay the license fee calculated on a pro rata basis until such time as the removal of personal property and fixtures are completed.

18. LICENSEE may not within the initial term of this Agreement assign or transfer its rights hereunder at any time, without the written approval of Monroe County. Subsequent to the initial five (5) year term, this Agreement may not be sold, assigned or transferred at any time, except to LICENSEE's principal, affiliates or subsidiaries of its principal or to any company upon which LICENSEE is merged or consolidated. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the COUNTY, such consent not to be unreasonably withheld.

LICENSEE may not assign, or otherwise transfer all or any part of its interest in this Agreement or in the Premises without the prior written consent of COUNTY; provided, however, that LICENSEE may assign its interest to its parent company, any subsidiary or affiliate of it or its parent company or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets, subject to any financing entity's interest, if any, in this Agreement as set forth in Paragraph 29 below. COUNTY may assign this Agreement upon written notice to LICENSEE, subject to the assignee assuming all of COUNTY's obligations herein, including but not limited to, those set forth in Paragraph 29 below. Notwithstanding anything to the contrary contained in this Agreement, LICENSEE may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom LICENSEE (i) has obligations for borrowed money or in respect of guaranties thereof; (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations

Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

19. COUNTY covenants that COUNTY is seized of good and sufficient title and interest to the Premises and has full authority to enter into and execute this LICENSE AGREEMENT. COUNTY further covenants that there are no other liens, judgments or impediments of title on the Real Property and that the Tower, Building and that the Real Property is in compliance with all applicable laws.

20. LICENSEE, at LICENSEE's option and expense, may record a Memorandum this LICENSE AGREEMENT \* and obtain title insurance on the Premises and/or Real Property. COUNTY, at COUNTY's expense, shall cooperate with LICENSEE's efforts to obtain such title insurance policy by executing documents or, obtaining requested documentation as required by the title insurance company.

\*Attached as Exhibit C

21. COUNTY covenants that LICENSEE, on paying the license fee and performing the covenants, shall peaceably and quietly have, hold and enjoy the Premises and all other rights granted herein.

22. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, addressed to each party as set forth in the preamble.

NOTICE: Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below:

COUNTY: Monroe County Board of County Commissioners  
5100 College Road  
Key West, FL 33040

LICENSEE: Nextel South Corporation  
6700 N. Andrews Ave. Suite 700  
Ft. Lauderdale, FL 33309  
Attn: Property Manager

With a copy to: Nextel Communications, Inc.  
1505 Farm Credit Drive  
McLean, VA 22102  
Attn: Legal Dept., Contracts Manager

COUNTY or LICENSEE may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt.

23. This LICENSE AGREEMENT shall extend to and bind the heirs, personal representatives, successors and assigns of the parties hereto.



Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

24. This LICENSE AGREEMENT may be executed in four (4) counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same LICENSE AGREEMENT.

\*Please note: Nextel requires 3 originals plus 1 for County

25. This LICENSE AGREEMENT and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Florida.

26. In any action, proceeding or litigation arising out of this LICENSE AGREEMENT, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable costs incurred including reasonable attorney's fees for services rendered, including appellate proceedings and post judgment proceedings. Venue for any action arising under this AGREEMENT must be in a court of competent jurisdiction in Monroe County.

27. LICENSEE shall have the right at any time following the full execution of this Agreement to enter upon the Property for the purpose of making appropriate engineering and boundary surveys, inspections, soil test borings, other reasonably necessary tests and constructing the LICENSEE Facilities (as defined in Paragraph 28 below). Upon LICENSEE's request, COUNTY agrees to provide promptly to LICENSEE copies of all plans, specifications, surveys and tower maps for the Land and Tower. The tower map shall include the elevation of all antennas on the Tower and the frequencies upon which each operates.

28. LICENSEE has the right to erect, maintain and operate on the Premises radio communications facilities, including without limitation utility lines, transmission lines, air conditioned equipment shelter(s), electronic equipment, radio transmitting and receiving antennas not including the tower, and supporting equipment and structures thereto ("LICENSEE Facilities"). In connection therewith, LICENSEE has the right to do all work necessary to prepare, maintain and alter the Premises for LICENSEE's business operations and to install transmission lines connecting the antennas to the transmitters and receivers. All of LICENSEE's construction and installation work shall be performed at LICENSEE's sole cost and expense and in a good and workmanlike manner. Title to the Licensee Facilities shall be held by LICENSEE. All of LICENSEE Facilities shall remain LICENSEE's personal property and are not fixtures. LICENSEE has the right to remove all LICENSEE Facilities at its sole expense on or before the expiration or earlier termination of the agreement; provided, LICENSEE repairs any damage to the Premises caused by such removal.

LICENSEE shall pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. LICENSEE shall have the right to draw electricity and other utilities from the existing utilities on the Property or obtain separate utility service from any utility company that will provide service to the Property (including a standby power generator for LICENSEE's exclusive use). COUNTY agrees to sign such documents or easements as may be required by said utility companies to provide such service to the Premises, including the grant to LICENSEE or to the servicing utility company at no cost to the LICENSEE, of an easement in, over across or

Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

through the Land as required by such servicing utility company to provide utility services as provided herein.

29. COUNTY waives any lien rights it may have concerning the LICENSEE Facilities which are deemed LICENSEE's personal property and not fixtures, and LICENSEE has the right to remove the same at any time without COUNTY's consent.

COUNTY acknowledges that LICENSEE has entered into a financing arrangement including promissory notes and financial and security agreements for the financing of the Licensee Facilities (the "Collateral") with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, COUNTY (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

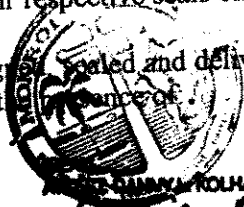
30. This agreement may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, provided that the grace period for any monetary default is ten (10) days from receipt of notice; or (ii) by LICENSEE for any reason or for no reason, provided LICENSEE delivers written notice of early termination to COUNTY no later than thirty (30) days prior to the Commencement Date; or (iii) by LICENSEE if it does not obtain or maintain any license, permit or other approval necessary for the construction and operation of Licensee Facilities; or (iv) by LICENSEE if LICENSEE is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies; or (v) by LICENSEE if LICENSEE determines that the Premises are not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference. If this Agreement is terminated pursuant to this paragraph, COUNTY agrees to return to LICENSEE a pro rata portion of any prepaid rent.

31. In the event the Property is encumbered by a mortgage or deed of trust, COUNTY agrees to obtain and furnish to LICENSEE a non-disturbance and attornment instrument for each such mortgage or deed of trust.

Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals on the day and year first above written.

Signed, sealed and delivered  
in the presence of:



Ruth Ann Santagoni  
DEPUTY CLERK

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

COUNTY:

MONROE COUNTY, FLORIDA,  
a political subdivision of the  
State of Florida

By Shirley Freeman  
Print Name: SHIRLEY FREEMAN  
Title: MAYOR PRO TEM

STATE OF FLORIDA  
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 4th day  
of March 1998, by Shirley Freeman the  
Mayor Pro Tem of MONROE COUNTY, FLORIDA, a political subdivision  
of the State of Florida, on behalf of Monroe county, who (check one) ☒ is personally  
known to me or ( ) produced \_\_\_\_\_ as identification.



RUTH ANN SANTAGONI  
My Comm Exp. 12/31/99  
Bonded By Service Inc.  
No. CC506333  
K Notary Public - 11/01/99

Ruth Ann Santagoni  
NOTARY PUBLIC

My Commission Expires:

Name: \_\_\_\_\_

(Seal)

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
BY [Signature]  
ROBERT NEWLIFE  
DATE 11-24-98

Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

Signed, sealed and delivered  
In the presence of:

LICENSEE  
NEXTEL SOUTH CORP  
A GEORGIA CORPORATION  
d/b/a NEXTEL COMMUNICATIONS

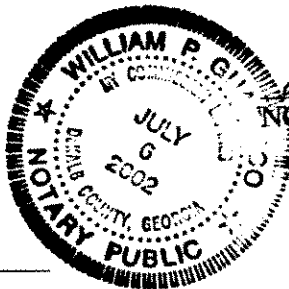
Bennie Williams  
Print Name: BENNIE WILLIAMS

By: [Signature]  
Print Name: JOHN CAZARO  
Title: VICE PRESIDENT

Catherine S. Brackett  
Print Name: CATHERINE S. BRACKETT

STATE OF ~~FLORIDA~~ Georgia  
COUNTY OF Gwinnett

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of January, 1999 by JOHN CAZARO, the \_\_\_\_\_ of NEXTEL SOUTH CORP., a Georgia Corporation, d/b/a Nextel Communications (Check one) ( ) is personally known to be or ( ) produced \_\_\_\_\_ as identification



[Signature]  
NOTARY PUBLIC

My Commission Expires:  
Name: \_\_\_\_\_

(Seal)

Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

## EXHIBIT "I"

### INTERFERENCE AGREEMENT

Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

## INTERFERENCE/CONFLICTS

LICENSEE shall, at it's own expense, maintain it's equipment on or attached to the Premises in a safe condition, in good repair and in a professional manner, suitable to Monroe County and in accordance to any County, State or Federal laws and regulations.

LICENSEE's equipment shall be installed and maintained in a manner so as not to conflict or interfere with Monroe County or any other entity utilizing the facility.

### IN THE EVENT OF INTERFERENCE:

1. The entity being affected by the interference will notify the Monroe County Emergency Communications department.
2. The Monroe County Emergency Communications Department in joint participation with the entity being affected will respond within 24 hours to the facility and begin analysis of the problem.
3. Upon identification of the interference source, the responsible entity will be immediately contacted, followed with a written notice.
4. The licensee, LICENSEE or user responsible for the interference will within 24 hours begin all steps necessary to correct and eliminate the interference at their expense.
5. Should the interference not be minimized within 72 hours or eliminated within 30 days, Monroe County may elect to terminate this Agreement or correct the interference problem at the lessee's, LICENSEE's or user's expense.
6. LICENSEE shall operate the LICENSEE Facilities in a manner that will not cause interference to COUNTY and other LICENSEEs or licensees of the Property, provided that their installations predate that of the Licensee Facilities. All operations by LICENSEE shall be in compliance with all Federal Communications Commission ("FCC") requirements.
7. Subsequent to the installation of the LICENSEE Facilities, COUNTY shall not permit itself, its Lessees or licensees to install new equipment on the Property or property contiguous thereto owned or controlled by COUNTY, if such equipment is likely to cause interference with LICENSEE's operations. Such interference shall be deemed a material breach by COUNTY. In the event interference occurs, COUNTY agrees to take all action necessary to eliminate such interference, in a reasonable time

Market: **SOUTH FLORIDA**  
Site No.: **FL1869-A**  
Site Name: **Dun Key West**

period. In the event COUNTY fails to comply with this paragraph, LICENSEE may terminate this Agreement, and/or pursue any other remedies available under this Agreement, at law, and/or at equity.

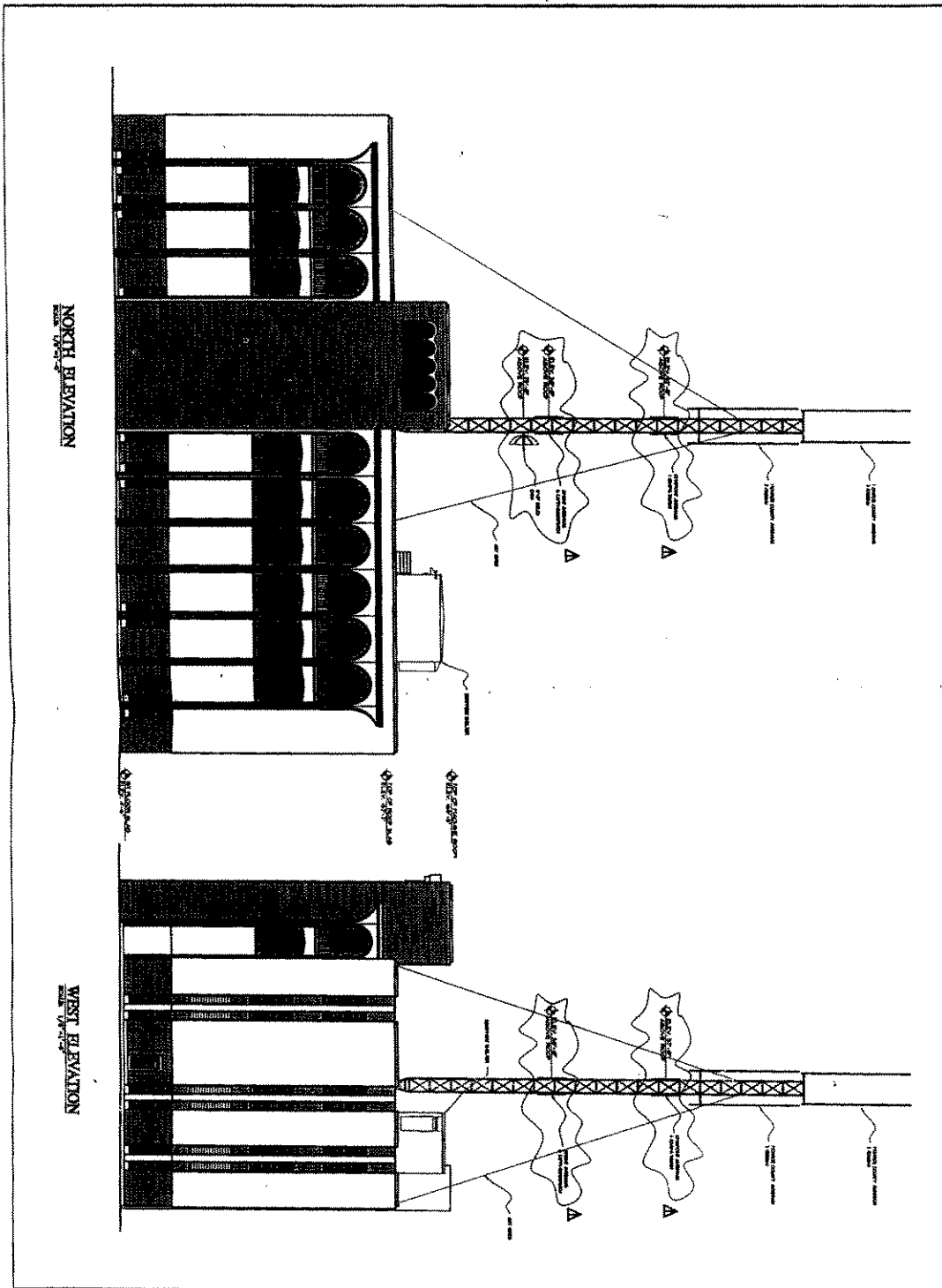
LICENSEE has satisfied itself and hereby represents and warrants to Monroe County that no such obstruction or interference with transmitting or receiving shall result to Monroe County or other licensees, LICENSEEs or users located at the facility. LICENSEE agrees to indemnify, hold harmless and defend Monroe County against any damage, including attorney's fees, arising out of such obstruction or interference with respect to uses which are in effect as to the date of this Agreement.

Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

**EXHIBIT "A"**  
**THE PREMISES**



A-1	2000 FILE	<b>MONROE COUNTY</b> <b>EMERGENCY COMMUNICATIONS DEPARTMENT</b>  KEY WEST - MIAMIOLA - PALM 2 500 VETERANS STREET, KEY WEST, MONROE COUNTY, FLORIDA	<b>NOVALINE</b> Architects and Engineers, Inc. 1000 Southwest 1st Avenue, Miami, Florida 33134 Phone (305) 442-5401 Fax (305) 442-5405 Telex 740000 NOVALINE US	Signature, Seal & Date 	Note This document is the property of the State of Florida. It is loaned to you for your use only. It is not to be distributed, copied, or otherwise used for any purpose other than that for which it was loaned. It is to be returned to the State of Florida upon completion of your use.	Distribution List To: [unclear] From: [unclear] Date: [unclear] Subject: [unclear] Distribution List 1. [unclear] 2. [unclear] 3. [unclear] 4. [unclear] 5. [unclear] 6. [unclear] 7. [unclear] 8. [unclear] 9. [unclear] 10. [unclear]
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A-3

NORTH AND WEST  
ELEVATIONS

**MONROE COUNTY**  
EMERGENCY COMMUNICATIONS DEPARTMENT  
KEY WEST - MIAMI/OLIA - PHASE I  
800 VETERAN STREET, KEY WEST, MONROE COUNTY, FLORIDA

**NOVALINE**  
Architects and Engineers, Inc.  
1000 Southwest 27 Avenue, Suite 200, Miami, FL 33135  
Phone: 305-358-1111 Fax: 305-358-1112  
www.novaline.com

Signature, Seal & Date  
*[Signature]*  
11/11/98

Note  
1. See Notes on Drawing  
2. See Notes on Drawing  
3. See Notes on Drawing  
4. See Notes on Drawing  
5. See Notes on Drawing  
6. See Notes on Drawing  
7. See Notes on Drawing  
8. See Notes on Drawing  
9. See Notes on Drawing  
10. See Notes on Drawing

Revisions  
1. 11/11/98  
2. 11/11/98  
3. 11/11/98  
4. 11/11/98  
5. 11/11/98  
6. 11/11/98  
7. 11/11/98  
8. 11/11/98  
9. 11/11/98  
10. 11/11/98

Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

**EXHIBIT "B"**  
**LICENSEE'S INSURANCE REQUIREMENTS**

See Paragraph 12 of the License Agreement for Insurance Requirements.

Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

**EXHIBIT "C"**  
**MEMORANDUM OF AGREEMENT**

Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

**EXHIBIT C**

**PREPARED BY:**

Paula Hickman, Esq.  
Nextel South Corp.  
6700 N. Andrews Avenue, Suite 700  
Ft. Lauderdale, FL 33309

**RETURN TO:**

Alan L. Gabriel, Esq.  
2455 East Sunrise Blvd., PHE  
Ft. Lauderdale, FL 33304

**MEMORANDUM OF AGREEMENT**

This Memorandum of Agreement is entered into on this \_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_, with an address at \_\_\_\_\_ (hereinafter referred to as "COUNTY") and NEXTEL SOUTH CORP., a Georgia corporation, d/b/a/ Nextel Communications with an office at 851 Trafalgar Court, Suite 300E, Maitland, FL 32751 (hereinafter referred to as "LICENSEE").

COUNTY and LICENSEE entered into a Communications Site Agreement ("Agreement") on the \_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, for the purpose of installing, operating and maintaining a radio communications facility and other improvements. All of the foregoing are set forth in the Agreement.

The term of the Lease is for five (5) years commencing on \_\_\_\_\_ ("Commencement Date"), 199\_\_\_\_, and terminating on the fifth anniversary of the Commencement Date with two (2) successive five (5) year options to renew.

The Land, which is the subject of the Agreement, is in \_\_\_\_\_ County, Florida, described in Exhibit A annexed hereto. The portion of the Land being leased to LICENSEE (the "Premises") is described in Exhibit B annexed hereto.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the day and year first above written.

Signed, sealed and delivered in the presence of:

COUNTY: FOR EXHIBIT ONLY --  
DO NOT EXECUTE

By: \_\_\_\_\_

Witness

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Witness

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

My commission expires: \_\_\_\_\_

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name:

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, by John Cafaro, as Vice President of Nextel South Corp., a Georgia corporation, d/b/a Nextel Communications who is personally known to me or who has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

My commission expires: \_\_\_\_\_

LICENSEE:

NEXTEL SOUTH CORP.,  
a Georgia corporation  
d/b/a Nextel Communications

By: \_\_\_\_\_ FOR EXHIBIT ONLY --  
DO NOT EXECUTE

Print Name: John Cafaro

Title: Vice President

3455-F1868keywest.lseprov

Market: South Florida  
Site No.: FL 1869 A  
Site Name: Downtown Key West

**PREPARED BY:**

Paula Hickman, Esq.  
Nextel South Corp.  
6700 N. Andrews Avenue, Suite 700  
Ft. Lauderdale, FL 33309

**RETURN TO:**

Alan L. Gabriel, Esq.  
2455 East Sunrise Blvd., PHE  
Ft. Lauderdale, FL 33304

**MEMORANDUM OF AGREEMENT**

This Memorandum of Agreement is entered into on this 9<sup>th</sup> day of December, 1998, by and between Monroe County, FL, a political subdivision of the State of Florida, with an address at 500 Whitehead Street, Key West, FL 33040 (hereinafter referred to as "COUNTY") and NEXTEL SOUTH CORP., a Georgia corporation, d/b/a Nextel Communications, with an office at 851 Trafalgar Court, Suite 300E, Maitland, FL 32751 (hereinafter referred to as "LICENSEE").

COUNTY and LICENSEE entered into a Communications Site Lease Agreement ("Agreement") on the 9<sup>th</sup> day of December 1998, for the purpose of installing, operating and maintaining a radio communications facility and other improvements. All of the foregoing are set forth in the Agreement.

The term of the Lease is for five (5) years commencing on December 9, ("Commencement Date"), 1998, and terminating on the fifth anniversary of the Commencement Date with five (5) successive five (5) year options to renew.

The Land which is the subject of the Agreement is in Monroe County, Florida, described in Exhibit A annexed hereto. The portion of the Land being leased to LICENSEE (the "Premises") is described in Exhibit B annexed hereto.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the day and year first above written.

Signed, sealed and delivered in the presence of:

Witness  
Print Name: DEAN L. KOLHAGE CLERK  
Deborah C. DeBartolo  
WITNESS  
Print Name: DEPUTY CLERK

MONROE COUNTY FLORIDA,  
A political subdivision of the State of Florida:

By: Wilhelmina J. Harvey

Print Name: Wilhelmina Harvey

Title: Mayor Chairman

STATE OF Florida  
COUNTY OF Monroe

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of June, 1999, by Wilhelmina Harvey as Mayor of Monroe County, a \_\_\_\_\_ who is personally known to me or who has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

WITNESS my hand and official seal.

Ruth Ann Jantzen  
Notary Public  
Ruth Ann Jantzen  
Print Name

RUTH ANN JANTZEN  
My Comm. Exp. 12/31/99  
Bonded By Sec. of Sts.  
#0056633

My commission expires: \_\_\_\_\_

(SIGNATURES CONTINUED ON NEXT PAGE)

Market: South Florida  
Site No.: FL 1869 A  
Site Name: Downtown Key West

Signed, sealed and delivered in the presence of:  
corporation

Nedra N. Waight  
Witness  
Print Name: NEDRA N. WAIGHT  
Danielle D. Talley  
Witness  
Print Name: DANIELLE TALLEY

LICENSEE:

NEXTEL SOUTH CORP., a Georgia

d/b/a Nextel Communications

By: [Signature]  
Print Name: John Cafaro  
Title: Vice President

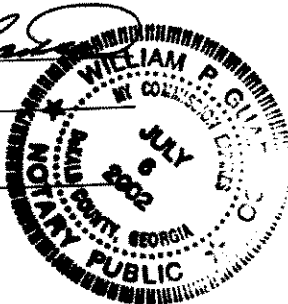
STATE OF GEORGIA

COUNTY OF GWINNETT

The foregoing instrument was acknowledged before me this 14th day of June, 1999, by John Cafaro, as Vice President of Nextel South Corp., a Georgia corporation, d/b/a Nextel Communications who is personally known to me and who did (did not) take an oath.

WITNESS my hand and official seal.

William P. [Signature]  
Notary Public  
Print Name  
My commission expires: \_\_\_\_\_





The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

Market: SOUTH FLORIDA  
Site No.: FL1869-A  
Site Name: Dwn Key West

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

My commission expires: \_\_\_\_\_

Signed, sealed and delivered in the presence of:

Bennie Williams

Witness

Print Name: BENNIE WILLIAMS

Catherine S. Brackett

Witness

Print Name: CATHERINE S. BRACKETT

STATE OF Georgia

COUNTY OF Gwinnett

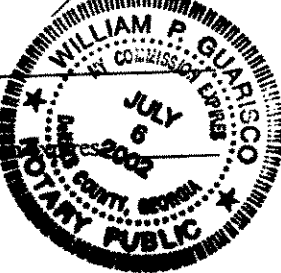
The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of January, 1999, by John Cafaro, as Vice President of Nextel South Corp., a Georgia corporation, d/b/a Nextel Communications who is personally known to me or who has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

WITNESS my hand and official seal.

William P. Guarisco  
Notary Public

\_\_\_\_\_  
Print Name

My commission expires \_\_\_\_\_



LICENSEE:

NEXTEL SOUTH CORP.,  
a Georgia corporation  
d/b/a Nextel Communications

By: John Cafaro

Print Name: John Cafaro

Title: Vice President

3455-F1868keywest.lseprov